

### **REMARKS/ARGUMENTS**

Claims 1 – 4, 6 – 15 and 17 are pending in the present application and are presented for further examination in view of the foregoing amendments and the following remarks. Claims 5 and 16 have been canceled.

In the outstanding Office Action, the Examiner objected to the claim 6 for depending on canceled claim 5; rejected claims 1, 2, and 9 – 11 under 35 U.S.C. §112, second paragraph, as being indefinite; rejected claims 1 – 4, 6, 7, 9 – 11, 15 and 17 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,757,876 to Peacock (hereinafter referred to as “the Peacock ‘876 patent”); and rejected claims 8 and 12 – 14 under 35 U.S.C. §103(a) as being unpatentable over the Peacock ‘876 patent in view of U.S. patent no. 4,773,503 to Purkapile (hereinafter referred to as “the Purkapile ‘503 patent”).

By this Response and Amendment, claim 1 has been amended to recite “a lower end of the second leg portion adapted to be pivotally and releasably secured to a support member projecting from any rigid portion of the truck, wherein, at an end of the support member and at a lowermost point of the second leg portion, there is a pivot for pivotally articulating the second leg portion.”

Support for the amendments to claim 1 can be found on page 4 lines 21 – 27 of the originally filed application. Therefore, it is respectfully submitted that the above amendments do not introduce any new matter within the meaning of 35 U.S.C. §132(a).

### **Objection to Claim 6**

The Examiner objected to claim 6 for depending on canceled claim 5.

### **Response**

In the Examiner’s Advisory Action, he indicated that the amendments submitted on January 6, 2005 were entered. In those January 6<sup>th</sup> amendments, the dependency of claim 6 was changed from claim 5 to claim 1. Thus, this objection is moot.

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the objection to claim 6.

**Rejections Under 35 U.S.C. §112, Second Paragraph**

The Examiner rejected claims 1, 2, and 9 – 11 as being indefinite. The Examiner asserted that “[t]here is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. The Examiner requires the Applicant “to clarify what the claims are intended to be drawn to, i.e., either the ‘ladder’ alone or in combination with the ‘truck’.”

**Response**

In the Examiner’s Advisory Action, he indicated that the amendments submitted on January 6, 2005 were entered. In those January 6<sup>th</sup> amendments, the claims were amended to correct the cited inconsistencies. Thus, this rejection is moot.

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §112, second paragraph.

**Rejections Under 35 U.S.C. Rejections Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1 – 4, 6, 7, 9 – 11, 15 and 17 as being anticipated by the Peacock ‘876 patent.

**Response**

By this Response and Amendment, claim 1 has been amended and, as amended, Applicant respectfully traverses the Examiner’s rejections.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, or either expressly or inherently, in a single prior art

reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

Independent claim 1 recites “[a] A ladder adapted to be secured to a truck fitted with a pivotal tailgate, the ladder comprising a first leg portion pivotally coupled to a second leg portion, at least one of said leg portions being fitted with at least one rung; an upper end of the first leg portion adapted to be pivotally attachable to an upper portion of the tailgate and a lower end of the second leg portion adapted to be pivotally and releasably secured to a support member projecting from any rigid portion of the truck, wherein, at an end of the support member and at a lowermost point of the second leg portion, there is a pivot for pivotally articulating the second leg portion, whereby when the tailgate is in its closed position, the first leg portion and the second leg portion are adapted to continuously extend over the tailgate in a first operable position and opening the tailgate is associated with spontaneous and automatic deploying the ladder into a corresponding second operable position.” *Present application*, claim 1.

The Peacock ‘876 patent discloses a ladder having two portions. The ladder includes lower arms 17, having extension legs 14, and upper arms 16. The Peacock ‘876 patent discloses that an extension leg 14 includes a rubber plug 35 at the end of the extension legs 14. The ladder disclosed in the Peacock ‘876 patent is intended to rest on the ground.

In an interview conducted between the Examiner and the Applicant’s representative, the Examiner indicated that adding support members 54, *see Present Application* at page 4, line 23, to the independent claim would differentiate the presently claimed invention over the Peacock ‘876 patent. Thus, Applicant has added a feature reciting that “the second leg portion [is] adapted to be pivotally and releasably secured to a support member projecting from any rigid portion of the truck, wherein, at an end of the support member and at a lowermost point of the second leg portion, there is a pivot for pivotally articulating the second leg portion.” In contrast to the Peacock ‘876 patent, the support

member of the presently claimed invention effectively serves as a third leg of the ladder and which is secured to a rigid portion of the truck. Applicant thus submits that, as the Peacock '876 patent does not disclose, teach or suggest "a support member projecting from any rigid portion of the truck, wherein, at an end of the support member and at a lowermost point of the second leg portion, there is a pivot for pivotally articulating the second leg portion," the presently claimed invention is patentable over the Peacock '876 patent.

Accordingly, Applicant respectfully requests that the Peacock'876 patent does not anticipate claims 1 – 7, 9 – 11 and 15 – 17.

#### **Rejections Under 35 U.S.C. §103(a)**

The Examiner rejected claims 8 and 12 – 14 as being unpatentable over the Peacock '876 patent in view of the Purkapile '503 patent.

#### **Response**

The Arguments above with respect to the Peacock '876 patent are hereby incorporated by reference. By this Response and Amendment, claim 1 has been amended and, as amended, Applicant respectfully traverses the Examiner's rejections.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

The Purkapile '503 patent does not account for the deficiencies of the Peacock '876 patent. The Purkapile '503 patent is directed toward a hinge for connecting two sections of a ladder. The Purkapile '503 patent is not directed toward the *entire* ladder, rather the Purkapile '503 patent is directed toward a component of the ladder. The Purkapile '503 patent is silent as to "the second leg

portion adapted to be pivotally and releasably secured to a support member projecting from any rigid portion of the truck, wherein, at an end of the support member and at a lowermost point of the second leg portion, there is a pivot for pivotally articulating the second leg portion," as recited in independent claim 1.

Therefore, Applicant submits that, either alone or in combination with each other, neither the Peacock '876 patent nor the Purkapile '503 patent render amended independent claim 1 obvious. Applicant submits that, since claims 8 and 12 – 14 depend from claim 1 and contain all of the features found therein, the references do not render claims 8 and 12 – 14 obvious.

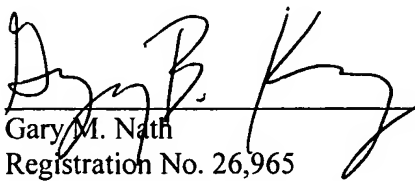
Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections made under 35 U.S.C. §103(a).

### CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Date: April 6, 2005  
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Respectfully submitted,  
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